DOCUMENT RESUME

ED 420 425 PS 026 598

TITLE	Guide to the Family and Medical Leave Act: Questions & Answers. Fourth Edition.
INSTITUTION	National Partnership for Women and Families, Washington, DC.
SPONS AGENCY	Ford Foundation, New York, NY.; Levi Strauss Foundation, Inc., San Francisco, CA.; Charles H. Revson Foundation, Inc., New York, NY.
PUB DATE	1998-00-00
NOTE	28p.
AVAILABLE FROM	National Partnership for Women and Families, 1875 Connecticut Avenue, NW, Suite 710, Washington, DC 20009; phone: 202-986-2600; World Wide Web: www.nationalpartnership.org
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Day Care; Early Childhood Education; *Employed Parents; Employment; Family Environment; Family Problems; *Family Work Relationship; *Federal Legislation; *Leaves of Absence; Personnel Policy; Released Time; Sick Child Care
IDENTIFIERS	*Family and Medical Leave Act 1993

ABSTRACT

The Family and Medical Leave Act of 1993 (FMLA) provided workers with the right to take time off from work to care for their families or themselves without fear of losing their jobs. Although this law is relatively straightforward, some employees and employers may be unsure about how it actually works. This guide is designed to answer many frequently asked questions about the FMLA, and is based on the U.S. Department of Labor regulations explaining the FMLA. Noting that state laws, union contracts or other contingencies may provide additional protections, the guide explains the operation of the federal FMLA alone, and describes the law and regulations only generally. The guide covers issues of family leave for a new baby, a sick child or family member, and using vacation or sick leave to provide this care. Issues of medical leave, including medical certification requirements, are covered. Other issues discussed include how the FMLA protects job and health insurance, requirements for notifying employers, who the FMLA applies to, responses to employer violation of these FMLA rights, other laws, and other family and medical leave materials available from the National Partnership for Women and Families. (JPB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

National Partnership
for Women & Families

ED 420 425

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Family & Medical Leave Act

PS 026598

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY
Anne C. Arnold
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

VAILABLE

Q&A FMLA

fourth edition 1998

BEST COPY AVAILABLE

Table of Contents

		Page
Family and Medical Leave		
The Basics	*Questions 1-6*	2
Family Leave		
Caring for a New Baby–for Moms and Dads, Births and Adoptions	*Questions 7-13*	4
Caring For a Seriously Ill Child, Spouse, or Parent	*Questions 14-18*	7
Using Vacation or Sick Leave to Care for a Family Member	*Questions 19-21*	8
Medical Leave		
Taking Leave for Your Own Serious Illness	*Questions 22-26*	9
Medical Certification Requirements	*Questions 27-31*	10
Using Vacation or Sick Leave During Your Own Serious Illness	*Questions 32-34*	11
How the FMLA Protects Your Job & Health Insurance	*Questions 35-40*	13
Requirements for Notifying Your Employer	*Questions 41-44*	15
Does the FMLA Apply to Everyone?	*Questions 45-47*	16
What Should I Do If My Employer Violates My Rights Under the FMLA?	*Questions 48-52*	17
Other Laws	*Questions 53-55*	19
More Family and Medical Leave Materials Available from the National Partnership for Women & Famlies	*Order Form*	21

Introduction

The Family & Medical Leave Act

In early 1993, President Clinton signed the *Family and Medical Leave Act* (FMLA), culminating a nearly decade-long struggle to enact legislation that would allow people to take time off from work to care for their families or themselves.

Before this law was enacted, many American employees were unable to take time off from work in family emergencies for fear of losing their jobs. In fact, according to the U.S. Bureau of Labor Statistics, in 1990 only 37 percent of all working women in firms with 100 employees or more were eligible for unpaid maternity leave upon the birth of a child. In the decades before this law, untold thousands of employees were forced to choose between caring for their families or keeping their jobs.

To address this intolerable situation, the FMLA was developed. It guarantees that people who work for companies with more than 50 employees can take up to 12 weeks' unpaid leave a year to care for a newborn or newly-adopted child or for certain seriously ill family members, or to recover from their own serious health conditions.

Although this law is relatively straightforward, some employees and employers may be unsure about how it actually works. This Guide is designed to answer many frequently asked questions about the FMLA. It is generally based on the regulations explaining the FMLA issued by the U.S. Department of Labor (Labor Department), which enforces the law.

This Guide explains the operation of the federal FMLA alone. In many cases, however, employees have additional protections against losing their jobs--such as protections found in state family and medical leave laws, union contracts, or laws that prohibit discrimination on the basis of disability. These may provide greater benefits or security than the federal FMLA. For example, the FMLA guarantees 12 weeks of leave a year; but state law, a union contract, or the *Americans with Disabilities Act* may give an employee a longer period of job protection. *(See Questions 53-55 for more information about other laws that also affect family and medical leave.)*

This Guide can only describe the law and regulations in general. To find out how the FMLA, as well as the laws or contracts mentioned above, affect your particular situation, contact a lawyer who specializes in employees' rights, the Labor Department's Wage and Hour Division (1-800-959-FMLA), your state labor department, and/or your union.

The Basics

1 When can I take family or medical leave?

- If you are having or adopting a baby;
- If your child, spouse, or parent has a serious health condition; or
- If you have a serious health condition, including pregnancy.

The FMLA gives you the right to take time off ("leave") without losing your job.

> **Definitions:** This Guide uses the term "family leave" to mean time off to care for ***another*** person in your family–a newborn or newly-adopted child, or a child, spouse, or parent with a serious health condition. "Medical leave" is used to mean time off to seek medical treatment for or to recover from your ***own*** serious health condition.

2 How much leave can I get?

The FMLA allows you to take either ***family leave***, or ***medical leave***, or both, for up to a total of 12 weeks per year. This means that if you are on family or medical leave and not out for more than 12 weeks in a year, your job is protected.

3 How do I know if I can take family or medical leave?

Not everyone is covered. There are generally three conditions:

First, your employer must have 50 or more employees on the payroll for 20 work weeks during the current or preceding calendar year.

- To determine whether your employer is covered, find out how many employees are on the payroll, including those on leave and working part-time.

Second, 50 employees must work within 75 miles of your worksite for you to be covered.

- You can count employees at different worksites within 75 miles to reach the 50-employee threshold. For example, if your employer has 25 employees working at your worksite, and 25 employees working at another worksite 10 miles away, the employer is covered, and must comply with the FMLA. But if the two worksites are 100 miles apart, then the employer would not be covered.

Third, you must have worked for your employer for at least 12 months and for at least 1,250 hours during the last year.

- If you worked 25 or more hours for 50 weeks in a year, you would have worked the required total of 1,250 hours. (Certain special rules also apply to teachers and some highly paid "key" employees–*see Questions 45 and 47.*)

4 Will I get paid while I'm on family or medical leave?

The FMLA does not require your employer to pay you during leave. But if you have any accrued paid annual leave and, in some circumstances, accrued paid sick leave, the FMLA ***does*** give you the right to use that up during your family or medical leave.

> **Example:** If you have accrued three weeks of paid sick leave, and you are on medical leave for eight weeks because you have just had a Caesarean section, you can insist that your employer pay you for the first three of the eight weeks you are out.

(See Questions 19-21 and 32-34 for more information about how to use accrued paid leave when you are otherwise on unpaid FMLA leave.)

In addition, if male employees get paid while they are on leave for eight weeks because of serious health conditions like heart attacks, female employees on leave for eight weeks because of pregnancy- or childbirth-related disabilities must get paid too, under the *Pregnancy Discrimination Act.*

5 What if I need more than 12 weeks off?

Under the FMLA, after you have taken 12 weeks off in a year, your employer is not required to reinstate you.

Again, if your employer gives male employees longer leave for serious health conditions like heart attacks, female employees may not be limited to 12 weeks for pregnancy- or childbirth-related health conditions under the *Pregnancy Discrimination Act*.

6 What information about the FMLA is my employer required to give me?

All employers with 50 or more employees are required to post a notice about the FMLA someplace where employees can see it. Copies of the notice are available from the Labor Department's Wage and Hour Division. *(See Question 52 for information about how to contact the Wage and Hour Division.)*

If your employer fails to post the notice, you cannot be penalized if you don't give your employer advance notice that you will be needing leave. Also, the Labor Department could fine your employer if its failure to post the notice was willful.

In addition, when you request family or medical leave, your employer is required to give you information about medical certification and other requirements that will apply to your specific leave.

Family Leave

Caring for a New Baby–for Moms and Dads, Births and Adoption

7 I just found out I'm pregnant! How much maternity leave do I get?

Your job will be protected for up to 12 weeks (in any 12-month period) if you are on leave either for the medical needs of pregnancy, childbirth, and recovery OR to care for your new baby–the two components of "maternity leave."

Definitions: Under the FMLA, traditional "maternity leave" consists of two different kinds of leave:

First, the "medical leave" part of "maternity leave," which lasts for the period of time during which you are physically unable to work due to pregnancy, childbirth, recovery, and related medical conditions; and

Second, the "family leave" part of "maternity leave," which is the time you take off not because you ***need*** to, physically, but because you ***want*** to be home with your new baby.

The FMLA guarantees you 12 weeks for these two kinds of leave ***combined.***

8 I'm having a very difficult pregnancy, and my doctor says I may need to take off time BEFORE my baby is born. Can I do that without losing my job?

Yes. The FMLA covers any pregnancy-related leave that is medically necessary. And you can take it when it is necessary medically, intermittently, in chunks of time, or all at once. So for example, if you have to be out of work due to morning sickness for two weeks in the early part of your pregnancy, your job (or an equivalent one) will be protected, and you can also take time later in the pregnancy if you need to.

At that time, you will have the remainder of the 12-week FMLA period for childbirth and recovery, and to stay home with your new baby. All this leave is unpaid, unless you have accumulated sick leave or vacation time you can use (or your employer has disability insurance or another paid-leave program that covers some or all of your time off). *(See Questions 19-21 and 32-34 for more discussion of paid leave.)*

9 My baby is due in early January, and my company holds a big conference that I'm responsible for at the end of May. Assuming I need six weeks to recuperate from childbirth medically, can I take those six weeks off in January and February, come back to work through the conference, and then take the remaining six weeks of leave in June and early July?

Yes, if your employer agrees. Also, you have to take the non-medically necessary part of the leave within one year of the child's birth. (The U.S. Department of Labor interprets this limitation as meaning that you must ***complete*** the leave within that year.)

10 After I've recovered from childbirth, I'd like to work part-time. Can my family leave be taken by reducing my work-week to a part-time schedule?

Only if you and your employer agree may you take your family leave by working part-time. So if you stayed home full-time for six weeks, you might be able to take the remaining six weeks of leave by working half-time for 12 weeks–going back to work full-time when your baby is 18 weeks old.

11 We are adopting a child. Do I get leave, and is it paid or unpaid?

Like biological parents, adoptive parents may take up to 12 weeks of leave to care for a child when she or he comes into your home as part of an adoption. (This also applies to a child you recently assumed parental responsibilities for, such as a foster child.)

> **Important note:** Under the law, the right to take family leave when a child is adopted occurs when you first take actual custody of the child, when the child is "placed" with you. You do ***not*** have to wait for the adoption to be finalized, often months or even years after you first get the baby, to take leave.

Adoptive parents do not have the right under FMLA to use any paid sick leave they have accrued to cover part of their unpaid leave when they have a newborn. They can, however, use their accrued paid annual leave for that purpose.

12 We need to take time off from work to complete the home study and other legal requirements before our child's adoption is final. Does the FMLA protect our jobs?

Yes. As long as you have not used up your annual 12 weeks, your employer must give you unpaid leave for an absence from work that is required for the adoption to proceed.

13 My husband wants to take leave when the baby comes too. Can he?

Yes, and you can ***each*** take up to 12 weeks. You can both take leave at the same time; you can overlap your leaves; or you can take them consecutively (as long as each parent's leave occurs within one year of the child's birth or placement for adoption).

Exception: If you and your husband both work for the same employer, your employer may limit your ***combined*** leave to 12 weeks during a 12-month period.

Caring For a Seriously Ill Child, Spouse, or Parent

14 How much leave can I take to care for a family member who has a serious health condition?

You can take up to 12 weeks of leave during any 12-month period.

15 Who counts as "family" when I need to take such leave?

Under the FMLA, "family members" are:

- Your ***parent;***
- your ***child,*** including adult children who are incapable of caring for themselves; or
- your ***spouse***–when they have a "serious health condition."

16 My mother-in-law has just been hospitalized. Can I take leave to care for her?

No. You have the right to take leave only to care for someone who is a biological or adoptive parent or acted as your parent when you were a child. Your spouse can take leave to care for his or her parents.

17 What kind of "serious health condition" must my family member have for me to get leave?

If your family member is hospitalized, that counts as a serious health condition under the FMLA. It is also a serious health condition if your family member has a serious physical or mental condition that involves continuing treatment by a health care provider.

Definition: In general, if your family member is incapacitated for more than three consecutive days, has gone to see a doctor or other health care provider at least once, and is under a regimen of continuing treatment by the health care provider, she or he is considered to have a condition that "involves continuing treatment by a health care provider," and is thus protected under the FMLA even if no hospitalization is involved.

In some circumstances, a condition that doesn't last more than three days or that doesn't require actual doctor's visits may qualify. If you are unsure, consult the Labor Department and an attorney. *(See Question 52.)*

The following are examples of conditions generally considered serious: heart conditions, strokes, back conditions, injuries caused by accidents, pregnancy and related conditions such as miscarriages and morning sickness, cancer, asthma, pneumonia, diabetes, epilepsy, serious infections, Alzheimer's, and arthritis. But this list is not exhaustive; many things not on this list are serious health conditions, too.

18 I need a few hours every week to take my father, who is recovering from a stroke, to physical therapy. May I take that time as part of my family leave?

Yes. Family leave may be taken intermittently when medically necessary. You may take leave in blocks of time–such as several hours, a half-day, a day, a week, four weeks or 12 weeks–to care for a family member with a serious health condition. If you are going to need intermittent leave regularly, your employer may require you to transfer temporarily to another position that has the same pay and benefits but is better suited to recurring periods of leave.

Using Vacation or Sick Leave to Care for a Family Member

19 My employer offers two weeks of paid vacation (called "annual leave"). May I use my paid vacation as family leave?

Yes. You may use any paid vacation or annual leave you have accrued as part of your family leave. The paid vacation, personal, or other leave will then count against the 12 weeks you are entitled to under the FMLA.

Example: If you choose to use two weeks of paid vacation for family leave, you are then entitled to an additional 10 weeks of unpaid leave.

20 My employer offers two weeks of paid sick leave. Can I use my paid SICK leave as family leave?

Probably. If your employer normally allows use of sick leave for such purposes, you undoubtedly can use your accrued paid sick leave for family

leave (your employer may even require you to use it). But even if that is not your employer's normal practice, the FMLA may be interpreted to allow you to use your paid sick leave as part of your unpaid family leave to care for a seriously ill family member. You should consult a lawyer if you run into this situation.

21 I would like to take my paid vacation first, and THEN take 12 weeks of unpaid leave. But my employer wants me to use up the accrued paid leave as part of my family leave. Must I use my paid leave as family leave?

Yes. In general, your employer may count your paid vacation leave as part of your 12 weeks of family leave. Of course, your employer does not have to insist on this.

Medical Leave

Taking Leave for Your Own Serious Illness

22 When can I take time off if I become seriously ill?

You may take medical leave when you are unable to perform your job duties because of a "serious health condition."

> **Definition:** The same definition of "serious health condition" used for family members applies here. *(See Question 17.)*

23 I have to receive chemotherapy once a month and am too ill to work for a few days after each treatment. Can I use medical leave?

Yes. As with family leave, medical leave may be taken intermittently—days or weeks or even hours at a time—if it is medically necessary. If your illness involves a planned medical treatment that occurs on a regular schedule, your employer may require you to transfer temporarily to another position, with the same pay and benefits, that is better suited for recurring periods of leave.

24 I recently took 12 weeks off to care for my sick husband. Am I entitled to any more leave if I am temporarily too ill to work?

No. Under the FMLA, you are entitled to a ***total*** of 12 weeks of family and medical leave in a year.

25 What if I am too sick to return to work–can my employer force me to come back to work once my leave expires?

No. If your serious health condition requires you to stop working altogether, you cannot be forced to return. But note that once you end your employment, your former employer has no obligation to provide benefits. Your employer is, however, probably required (under the *Consolidated Omnibus Budget Reconciliation Act* of 1986 or "COBRA") to offer you the opportunity to continue the same health coverage, provided you pay the full cost.

26 I recently suffered a back injury that makes it impossible for me to do my usual job, which requires a lot of lifting. My boss wants me to continue working at a different position that requires only "light duty," but I want to recuperate completely from my injury before I return to work. Can my boss make me return to work if he accommodates my injury?

No. Under the FMLA, if you cannot perform your job because of a serious health condition, you are simply entitled to up to twelve weeks of leave; you are not required to accept another job that is not equivalent during that time.

If you can and want to return to work sooner at a less strenuous job, however, you might choose the legal protections of the *Americans with Disabilities Act* (ADA), which requires employers to make reasonable accommodations to allow persons with disabilities to do their jobs, as long as these accommodations do not pose an undue hardship for the employer. A "light duty" assignment might be one such reasonable accommodation.

Medical Certification Requirements

27 To take leave, do I have to prove that I have a serious health condition or that my family member has a serious health condition and needs my care?

If you are taking medical leave for yourself or family leave to care for a family member with a serious health condition, your employer may request certification by a doctor or other health care provider.

28 What must be in the medical certification?

The certification must include:

- a description of the serious health condition;
- the date that the condition began or treatment became necessary; and
- the expected duration of the condition or treatment.

A sample medical certification form is available from the Labor Department's Wage and Hour Division. *(See Question 52 for information on how to contact the Wage and Hour Division.)*

29 What happens if my employer doesn't believe my doctor's certification?

If your employer doubts your certification, she or he may require you to get a second opinion from a health care provider she or he chooses. If the second opinion differs from the first opinion, then you and your employer must agree on a third health care provider to supply a third opinion. You and your employer must accept the third opinion as final. Your employer pays for the second and third opinions.

30 What happens if I don't provide the medical certification?

If you don't provide the medical certification, your absence is not protected by the FMLA. This means that your employer has the legal right to fire you for that absence (unless some other law, or your collective bargaining agreement, applies).

31 Do I have to get a medical release to come BACK to work?

Before you return to work, your employer may require you to submit a medical release from a health care provider showing your ability to work.

Using Vacation or Sick Leave During Your Own Serious Illness

32 I have accrued four weeks of paid sick leave, and two weeks of paid annual leave. May I use these so that I can be paid for part of my (otherwise unpaid) medical leave?

Yes. Even if your employer doesn't want to pay you during this leave, you may insist that your accrued paid sick and annual leave be used. But recognize that the paid leave also will count against the 12 weeks of unpaid leave you get under the FMLA.

Example: If you had a heart attack, had to recuperate at home for 12 weeks, and had accrued 4 weeks of paid sick leave and 2 weeks of paid annual leave, you could use your sick and annual leave to cover six of the 12 weeks. The remaining six weeks of leave would be unpaid. In that case, you would ***not*** be entitled to 12 weeks of unpaid leave under FMLA followed by the six weeks of accrued leave.

33 I've had a major illness this year, and would like to take the paid sick leave and vacation that I've accrued first, and THEN take 12 weeks of unpaid leave. But my employer wants me to use up my accrued paid sick and annual leave as part of my medical leave. MUST I use my paid leave as medical leave?

Yes. In general, your employer may count your paid sick and vacation leave as part of your 12 weeks of medical leave.

Of course, your employer does not ***have*** to insist on this. And note that your employer may not discriminate against pregnancy by counting paid leave against unpaid leave for pregnancy and childbirth but not for other health conditions.

34 My 75-year old mother, who lives out of town, has recently suffered a stroke and is in the hospital. I'm planning to take a week's vacation to care for her, organize her financial affairs, and find her a home health care provider so that she can recuperate at home. I'm worried that she will have more health problems in the coming year, so I don't want to use any of my 12 weeks of family leave now. But if I tell my employer WHY I'm taking this vacation week, he'll count it against my 12 weeks of FMLA leave. Do I have to tell him why I'm taking this vacation?

No. You have no legal obligation to disclose the purpose of your trip. (You do, of course, have to comply with the usual rules about taking vacation, including getting advance approval if that's usually required.)

But if your employer finds out that you used your vacation for family leave, he can retroactively designate it as such and count it against your 12-week total. However, the employer has to do so within a couple of days of finding out the reason for your trip.

And there may be good reason for you to designate this vacation time as family leave. As long as you provide the notice required under

the FMLA, your employer will not be able to cancel your vacation. And using FMLA time will protect you if your mother's condition worsens, and you end up having to stay more than one week–your employer will not be able to argue that you are not entitled to that additional leave because you failed to give adequate notice under the FMLA.

How the FMLA Protects Your Job & Health Insurance

35 Will I get my job back when I return to work after taking family or medical leave?

When you return to work, your employer must give you ***either*** the same job you had before you left, ***or*** a position that has equivalent benefits, pay, working conditions, and seniority.

> **Exception:** If your job would have been eliminated or downgraded, or you would have been laid off if you had not taken leave, then you would not be entitled to the same or an equivalent position when your leave is over.

36 What happens to my health insurance while I am on family or medical leave?

Your employer must continue to pay for your health insurance coverage during your leave as she or he normally would. If you usually contribute to your health insurance plan, you may be required to continue making your usual payments while you are on leave.

37 When can my employer stop making health insurance payments?

If you don't return to work after 12 weeks, your employer can stop making health insurance payments on your behalf. Even before that, if you tell your employer that you do not intend to return to work following your leave, your employer can stop making those payments. Also, if your job is eliminated while you are on leave, your employer can stop making health premium payments at the point at which your employment would have been terminated.

If your employer stops making these payments, you become eligible for your health insurance to be covered through "COBRA"–under which you can choose to remain part of your employer's group health plan if you pay the entire premium payment yourself.

38 What happens to my health insurance if I don't return from leave?

If you don't return from leave, your employer may require you to pay back the money paid to maintain your health insurance during your leave.

> **Exception:** If the reason you do not return to work is your own or your family member's serious health condition or other circumstances beyond your control, your employer cannot collect these health insurance premiums from you.
>
> **Example:** If your spouse is transferred to a job in another city while you are on leave, that is considered to be a circumstance beyond your control.

39 Will taking family and medical leave affect my seniority?

No. When you return to work, you are entitled to the same seniority you had before you went on leave. However, you are not entitled to ***earn*** seniority during your leave.

40 Will taking family and medical leave affect my other benefits?

Yes and no. During leave, your employer has no obligation to continue to give you any benefits other than health insurance, and those benefits thus may be discontinued during your leave.

But when you return to work, your employer must give you the same benefits you had before you went on leave. These benefits must be resumed without your having to re-apply or meet any new criteria.

> **Example:** If your employer pays for your life insurance policy, then she or he is required to provide that same life insurance policy with the same level of coverage when you return to work.

Your employer may choose to continue payments for life insurance or other benefits while you are on leave and recover the costs from you at a later date.

You are not entitled, however, to ***accrue*** benefits during your leave.

Requirements for Notifying Your Employer

41 How much notice should I give my employer when I am planning to take family or medical leave?

If you know ahead of time that you will be taking leave for a new child or for a planned medical treatment for yourself or a family member, you are required to give your employer 30 days' advance notice. In the case of a planned medical treatment, you must try to schedule medical treatment when it will not unduly disrupt your employer's business.

If the nature of a health condition makes advance notice impossible, you must request leave from your employer as soon as practicable. In an emergency situation–for example, if your child is hit by a car–you still have to give your employer notice as soon as you can, generally within one to two working days of taking leave. Even if your employer has a requirement of advance written notice, it can't be applied to prevent your taking leave in an emergency.

42 What must I say in my notice?

You must give enough information for your company to know that the leave is for birth or adoption, your own serious health condition, or the serious health condition of your child, spouse, or parent. There are no magic words required–your company is supposed to know when the FMLA applies. And you don't have to give detailed personal information (although your employer may request more information through the medical certification–*see Questions 27-31*).

But to play it safe, it doesn't hurt to mention that you want leave under the "FMLA"–so that your employer can't say she or he didn't know you were requesting FMLA leave.

43 What happens if I don't give the required notice?

If you fail to give your employer enough notice and don't have a reasonable excuse, your employer can delay the start date of your leave. This can cause you to miss the leave altogether, if the emergency is short-lived.

44 My employer has a policy that anyone who is on family or medical leave must check in every four weeks and let her know how we are doing and whether we still plan to return to work following our leave. Is this legal?

Yes. Your employer may require an employee on FMLA leave to report periodically on her status and intent to return to work. However, your employer may not do this in a discriminatory way–for example, by requiring only women who are on leave following childbirth to check in, based on the employer's belief that women will probably change their minds about returning to work.

Does the FMLA Apply To Everyone?

45 I am a teacher. Is my school required to provide leave?

Yes. Teachers and other instructors are eligible for family and medical leave if they meet the other requirements.

However, in some circumstances, limits may be placed on when teachers can return from leave to avoid disruptions in the school year. If you are scheduled to return from leave during the last few weeks of an academic term, you may have to extend your leave through the rest of the term even though you might be ready to come back sooner. During this period, however, the time you take off does not count against your 12-week a year FMLA entitlement. Your employer still must continue your health benefits, and your job (or an equivalent one) still is protected. (Your school or school board may have specific policies on the mechanics of how you will be restored to an equivalent position.)

Moreover, if you need leave on a regular basis over a period of time because of a planned medical treatment (e.g., chemotherapy treatments) and the leave will take at least 20 percent of your work time during that period, your employer may require you to choose either to take leave for that whole block of time, or to transfer temporarily to another position with equal pay and benefits that is better suited to recurring periods of leave. If you choose to take a block of leave, all of the time you are off will count against your 12 weeks of FMLA leave.

46 What if I work for the government–federal, state, or local?

The FMLA covers all local, state, and federal government agencies, regardless of the number of employees. But like employees of private companies, government employees have to work at a worksite that has 50 or more employees within 75 miles, and to have worked for the employer a minimum of 1,250 hours over the last year. *(See Question 3 for more information on these "eligibility requirements.")*

Employees of the U.S. House of Representatives and Senate also are covered, if they have worked for their employer at least 1,250 hours and 12 months. In the Congress, the FMLA is administered by the Office of Compliance.

47 I am a top executive at my company. Does the FMLA still apply to me?

In part. If you are among the highest-paid ten percent of employees in your organization, your employer may not have to keep your job or a similar position open for you. But before your employer can deny you leave, she or he must show that guaranteeing you your job would cause substantial economic harm to the organization. And you must be told in advance that your job may not be open when you return. Whatever happens on your return, your employer must maintain your usual health insurance coverage while you are on leave.

What Should I Do If My Employer Violates My Rights Under the FMLA?

48 What should I do if my employer denies my request for family or medical leave?

First, make sure that you have complied with ***your*** obligations under the FMLA:

- that you have given your employer clear notice, enough in advance; and
- that you have provided any required medical certification.

Second, make sure that your employer knows that you are relying on the FMLA. Give your employer a copy of the National Partnership for Women & Families' fact sheet on the FMLA. *(See page 21 for ordering information.)* Fact sheets are also available from the Labor Department. *(See Question 52 for information about how to contact the Wage and Hour Division.)*

If this still doesn't work, and you believe you are entitled to leave, contact your regional office of the Labor Department's Wage and Hour Division to file a complaint. You can file a complaint by phone, by mail, or in person.

Most problems like this have been resolved simply, by a phone call from the Labor Department to the employer.

If the problem is not resolved, though, the Labor Department may sue your employer on your behalf. Before doing that, the Department will investigate your complaint. That investigation may include a review of your employer's records and books, as well as other steps needed to resolve your complaint.

If you don't get immediate results, consider hiring a lawyer who is familiar with employees' rights to help you.

49 What should I do if I take family or medical leave but am told I have no job when I try to return to work?

If your employer is aware of the FMLA, and still refuses to reinstate you to your job or an equivalent one, file a complaint with the Wage and Hour Division immediately.

Again, if you don't get immediate results, consider hiring a lawyer who is familiar with employees' rights to help you.

50 Can I sue my employer in court if I don't get my rights under the FMLA?

Yes. If you believe that your rights under the FMLA have been violated, you can sue your employer in federal or state court. Generally, you must bring the suit within two years of the violation of your rights (three years if the violation is willful).

> **Exception:** If the Labor Department files a lawsuit on your behalf, you can no longer file your own suit.

51 What penalties does my employer face for not giving me leave or my job back?

If your rights are violated, you may get:

- your job back;
- up to double your lost wages and benefits; and
- your legal fees and costs.

52 Where can I get more information about enforcing my FMLA rights?

To get more information about enforcing the FMLA, call or write:

U.S. Department of Labor
Wage and Hour Division
200 Constitution Ave., NW
Washington, DC 20210

1-800-959-FMLA or
(202) 219-8305

Or call your regional office of the U.S. Department of Labor, Wage and Hour Division.

The Wage and Hour Division has written materials about the FMLA, including copies of the law itself and of the regulations, which you can get for free. These and other helpful materials are available on the Labor Department's web site at **www.dol.gov/dol/esa/fmla** and **www.dol.gov/elaws/fmla.**

Other Laws

53 What if my state offers 16 weeks of family and medical leave–can I take leave for 16 weeks a year instead?

Yes. The federal FMLA sets the minimum standard–12 weeks' unpaid family and medical leave. If your state has a ***more*** generous law than the FMLA, you can take advantage of the more generous provisions, too.

Example: The District of Columbia offers eligible employees 16 weeks of family leave and 16 weeks of medical leave over a 24-month period. So if you work in D.C., you can take 16 weeks of family leave in one year–that's covered by the D.C. law–and then, in the following year, you can take 12 weeks of family leave under the federal law.

As of August 1994, 34 states had some type of leave guarantee. To find out more about your state's laws, contact your state labor department.

54 Under our union contract, my employer already provides 16 weeks of PAID medical leave. But if the FMLA is the law, may my employer refuse to pay me during my leave, and give me only 12 weeks?

No. The FMLA does not diminish your employer's obligation to comply with any benefit plan or collective bargaining agreement that provides more generous family and medical leave benefits than the FMLA itself provides.

55 I recently suffered a stroke, and my doctor tells me that my rehabilitation will take several months; with the time I already spent in the hospital, this means that I will be out of work for at least sixteen weeks. Is my job protected?

As discussed in a number of places in this guide, the FMLA provides job security for only twelve weeks. However, you may also be protected under the *Americans with Disabilities Act* (ADA). The ADA requires certain employers to make reasonable accommodations to allow employees with disabilities to do their jobs. If your disability requires that you be out of work for more than twelve weeks, or requires that you return to work on a flexible schedule or at a less strenuous job, you may be able to argue that these are reasonable accommodations under the ADA.

If you think the ADA might help you, consult a lawyer.

More Family & Medical Leave Materials

Available from the

National Partnership *for Women & Families**

Qty.	Description
	What the FMLA Means to You (Fact Sheet), 2 pp. *A summary of what the Family and Medical Leave Act can do for you.*
	Building on Four Years of Success, *1998* *An extensive packet of information about the success of the FMLA and how to extend its benefits for more working families and more family needs.*
	Expanding the Family and Medical Leave Act to Cover Businesses with 25-49 Employees: The Impact in the U.S. and in Each State, 1997, 22pp. *A report detailing how expanding the FMLA will affect employees and businesses nationwide, and in each of the 50 states and the District of Columbia. Individual state fact sheets are available upon request.*
	What It Took to Pass the Family and Medical Leave Act: A Nine-Year Campaign Pays Off, 1994, 2 pp. *A brief history of the nine-year effort to pass the law.*

The first copy of all of the materials listed above is *free.
Additional copies are available for the cost of postage and handling. Contact the National Partnership at (202) 986-2600 for additional information and or for a more extensive list of FMLA materials. To request information over the internet, please email: info@nationalpartnership.org.

Please Complete "Ship To" Information on Reverse

Shipping Information

Please send the materials indicated to:

Name:

Organization:

Street Address:

City, State, ZIP:

Send this form to:

FMLA Materials

National Partnership for Women & Families

1875 Connecticut Avenue, NW, Suite 710

Washington, DC 20009

Be sure to visit our web site at **www.nationalpartnership.org** or write to us at the above address for the most current information about the FMLA and to learn more about the National Partnership for Women & Families.

National Partnership
for Women & Families

National Partnership for Women & Families
1875 Connecticut Avenue, NW, Suite 710
Washington, DC 20009
202.986.2600

BEST COPY AVAILABLE

1998 National Partnership for Women & Families